IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1665 OF 2003
IN
SUIT NO.3553 OF 1996

Ziaullah Eshraghi ...Plaintiff
Vs.
General Manager,B.E.S.T. ...Defendants

Mr.C.T.Kriplani for Plaintiff
Mr. H. Toor i/b. M/s. Cr. & Bayelay & Co.
for Defendants

CORAM: SMT.R.S.DALVI,J.
DATED: 4TH AUGUST, 2005

P.C.

1. The Plaintiff is a consumer of electricity supplied by the Defendants. Pursuant to a raid on the Plaintiff's premises in 1995 Plaintiff was charged with theft of electricity and the electricity connection was disconnected. In a previous Notice of Motion an injunction restraining this disconnection is passed and the Plaintiff has been receiving the electricity supply. This suit is interalia for refund of Rs.572740/- with interest at the rate of 18% per annum thereof.

2. I am told that the Plaintiff had taken out a similar Notice of Motion for refund of the amount which was not granted.

3. A criminal prosecution was launched against

Plaintiff by the Defendants that has culminated in the Plaintiff's acquittal. The judgment of acquittal dated 28th January, 2002. This Notice of Motion for similar relief is taken in June, 2003 on the ground that since the Plaintiff has been acquitted of the charge of theft of electricity and maliciously using the meter and the indicators and the apparatus of the Defendant, the amount claimed by the Plaintiff must be paid to him pending the suit.

4. The Plaintiff has produced the certified copy of the order of the learned Metropolitan Magistrate, Mumbai acquitting the Plaintiff. It is seen from that order that P.W.No.1, the Complainant who is an Officer of the Defendants has turned hostile. The Criminal Court did not find any specific evidence of tampering by the Plaintiff alone.

5. The acquittal judgment shows further that the meter has been installed such that it is accessible to all and not within exclusive control of the Plaintiff alone. The order further shows that the allegations that upon tampering the meter, the reading was 79% slow remained doubtful after the prosecution evidence was led. The FIR was filed after the delay of 13 days. The complainant was seen not to be authorised to launch the prosecution. He is shown to be not a aggrieved person under Section 50 of the Indian Electricity Act. The sanction to prosecute was not

produced. Considering all these aspects the Plaintiff has been acquitted.

6. However, in this Civil Suit filed by the Plaintiff for recovery of the amount of Rs.572740/-, it would be for the Plaintiff to first lead evidence to prove how he is entitled to recovery. The Plaintiff has been allowed to utilise the electricity supply even by the Defendants pending the suit. The recovery of the amount must wait until the Plaintiff discharges his onus in this suit.

7. It may be mentioned that the presumption under Section 114(e) of the Indian Evidence Act might also have to be considered in the suit before which payment of the disputed amount cannot be made to the Plaintiff. Hence, there shall be no order on this Notice of Motion.

. Copy of the certified copy of the Judgment of acquittal relied upon by the Plaintiff is taken on record.

8. Notice of Motion disposed of accordingly.

(SMT.R.S.DALVI,J.)